

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Brendan Lavin	:	
	:	
v.	:	C-2022-3033619
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

This decision grants the Respondent’s motion to dismiss for failure to prosecute because the Complainant failed to appear for the hearing.

**HISTORY OF THE PROCEEDING**

On July 8, 2022, Brendan Lavin (Mr. Lavin or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission against PPL Electric Utilities Corporation (PPL). On the Complaint form, Mr. Lavin checked the boxes indicating that PPL was threatening to shut off or had shut off his service, that there were incorrect charges on his bill, and that he was having a reliability, safety, or quality problem with his utility service.

On July 28, 2022, PPL filed an answer to the Complaint. In its answer, PPL admitted or denied the various averments made by Mr. Lavin. Specifically, PPL admitted that it had threatened to shut off the Complainant’s service and denied that there were incorrect charges

on his bill and that there was a reliability, safety or quality problem with the service provided to Mr. Lavin.

On August 29, 2022, an Initial Call-In Telephone Hearing Notice was issued for the hearing to be held on October 12, 2022, beginning at 10:00 a.m. A Prehearing Order was issued on September 9, 2022.

The hearing convened on October 12, 2022, as scheduled. Nicholas A. Stobbe, Esquire, appeared on behalf of PPL. No one appeared on behalf of Mr. Lavin.

The record in this case consists of the hearing transcript of eight pages. The record closed in this proceeding when the transcript was filed with the Commission on November 8, 2022.

This Initial Decision grants the motion PPL made at the conclusion of the hearing to dismiss the Complaint for failure to prosecute.

#### FINDINGS OF FACT

1. The Complainant is Brendan Lavin.
2. The Respondent is PPL Electric Utilities Corporation.
3. On July 8, 2022, Brendan Lavin filed a Formal Complaint with the Pennsylvania Public Utility Commission against PPL.
4. On July 28, 2022, PPL filed an Answer to the Complaint.
5. On August 29, 2022, an Initial Call-In Telephone Hearing Notice was issued for a hearing to be held on October 12, 2022, beginning at 10:00 a.m.

6. A Prehearing Order was issued on September 9, 2022.

7. Both the hearing notice and the prehearing order stated that the hearing was to begin at 10:00 a.m., provided the dial-in information and indicated that a party may lose the case if the party does not appear and take part in the hearing.

8. The hearing notice and the prehearing order were served upon the Complainant at the email address provided by the Complainant.

9. Neither the hearing notice nor the prehearing order served upon the Complainant were returned to the Commission as undeliverable.

10. No one called in to the hearing on behalf of Mr. Lavin at the designated date and time as instructed on the hearing notice and prehearing order.

11. At the time of the hearing, a recess was taken to allow Mr. Lavin or a representative an opportunity to call-in.

12. Neither the Complainant nor a representative called into the hearing before the hearing adjourned at 10:22 a.m.

13. The Complainant has not contacted the Commission since the hearing date to explain why his failure to appear at the hearing was unavoidable.

### DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more

convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

In this proceeding, the Complainant alleged: that PPL threatened to terminate, or had already terminated, his service; that there were uncorrected charges on his PPL bill; and that he had a reliability, safety, or quality problems with his PPL service. Mr. Lavin, therefore, has the burden of proof.

Administrative agencies such as the Commission are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984). This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. *Id.*, *see also*, *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016).

The prehearing order and hearing notice were both served on Mr. Lavin at the email address provided by him and neither was returned to the Commission as undeliverable. Notice electronically served to a party with no notification that service has failed is presumed received. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered Dec. 19, 2019) (*Hu*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017) (*Zirkel*). Further, the hearing notice and the prehearing order stated that if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.

No one appeared on behalf of Mr. Lavin at the time of the hearing, nor did Mr. Lavin request a postponement or continuance of the hearing. As such, Mr. Lavin had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Mr. Lavin's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

During the hearing, counsel for PPL moved to have the Complaint dismissed for failure to prosecute. Tr. 6. By failing to appear and present any evidence in support of his Complaint, Mr. Lavin has failed to carry his burden. 66 Pa.C.S. § 332(a). Once notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Strydio v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2633043 (Opinion and Order entered July 18, 2018).

Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

**§ 5.245. Failure to appear, proceed or maintain order in proceedings.**

- (a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:
  - (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
  - (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
  - (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa. Code § 5.245(a). Therefore, it is appropriate to dismiss this Complaint. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

Accordingly, the merits of the Complaint will not be addressed in this Initial Decision. Furthermore, there are no facts in the record that would allow the Commission to reach the conclusion that the Complainant's failure to attend the hearing was unavoidable. Accordingly, the Complaint is dismissed, with prejudice. *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); 52 Pa. Code § 5.245(a).

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
4. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).
5. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).
6. The Complainant's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); 52 Pa. Code § 5.245(a).
7. The Complainant failed to appear and failed to carry his burden of proof in this proceeding. 66 Pa.C.S § 332(a).

